

**DEC 05 2003**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

TRUK VINCENT CAREY,

Defendant - Appellee.

No. 02-30298

D.C. No. CR-02-00055-JAR

SUPPLEMENTAL  
MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
James A. Redden, District Judge, Presiding

Argued and Submitted May 5, 2003  
Portland, Oregon

Before: LAY\*\*, WALLACE, and TALLMAN, Circuit Judges.

This panel previously remanded for clarification by the district court on the  
question of whether burglary tools found in the defendant Truk Vincent Carey's

---

\* This disposition is not appropriate for publication and may not be cited to or  
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* Honorable Donald P. Lay, Senior United States Circuit Judge for the  
Eighth Circuit, sitting by designation.

car were “inextricably intertwined” with the discovery of a handgun that led to federal charges against him. We reserved jurisdiction over this appeal. The district court has now issued at our direction a Clarification of Ruling, in which it specifies that the burglary tools were deemed inadmissible under Fed. R. Evid. 404(b) and 403.

We review a district court’s decision to exclude evidence for an abuse of discretion. *United States v. Alatorre*, 222 F.3d 1098, 1100 (9th Cir. 2000). The district court clarified that it excluded the burglary tools because it found no logical nexus between the tools and the defendant’s firearm charge. *See United States v. Vizcarra-Martinez*, 66 F.3d 1006, 1012-13 (9th Cir. 1995). In addition, the court ruled that the tools could not be admitted under an exception to Rule 404(b) because their presence in Carey’s car did not tend to prove a material point of the government’s prosecution. *See United States v. Blackstone*, 56 F.3d 1143, 1145-46 (9th Cir. 1995). The court also found that the danger of potential prejudice outweighed the probative value of introducing this evidence. *See id.* at 1146.

The district court’s decision to exclude this evidence was not an abuse of its discretion. We therefore affirm the district court’s order granting the defendant’s motion in limine to exclude this evidence and we remand for further proceedings.

**AFFIRMED and REMANDED.**